

Message Text

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ACTION DLOS-06

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CIAE-00 CIEP-01 COME-00 DODE-00 DOTE-00 EB-07 EPA-01

ERDA-05 FMC-01 TRSE-00 H-02 INR-07 INT-05 JUSE-00

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C O N F I D E N T I A L USUN 3166

FROM: LOS DEL

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: INFORMAL PLENARY ON DISPUTE SETTLEMENT, AUGUST 9

1. CONSIDERATION OF ARTICLE 8, PART IV, RSNT (RELATIONSHIP AMONG PROCEDURES) CONCLUDED AUGUST 9 WITH PORTUGAL AND INDIA SUPPORTING INCLUSION OF SPEICAL PROCEDURES (ANNEX II) AS A CHAMBER OR CHAMBERS OF THE LOS TRIBUNAL; CANADA EXPRESSING RESERVATIONS ABOUT THE ELEVATION OF SPECIAL PROCEDURES TO THE SAME LEVEL AS THE ICJ, ARBITRATION AND THE LOS TRIBUNAL (AS WELL AS OPPOSING A SPECIAL COMMISSION FOR FISHERIES); AND GREECE SEEKING TO LIMIT SPECIAL PROCEDURES TO TECHNICAL, NOT LEGAL, ISSUES AND SUGGESTING ABSORBITION OF COMMISSIONS INTO CHAMBERS OF THE TRIBUNAL.

2. EL SALVADOR OPENED DEBATE ON ARTICLE 9 (CHOICE OF FORUM) WITH GENERAL SUPPORT FOR SYSTEM OF CHOICE SET FORTH IN
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PRESENT TEXT. ON SPECIAL COMMISSIONS, GALINDO POHL EXPRESSED

SKEPTICISM OVER THE INTERPRETATION-APPLICATION
DISTINCTION AND EXISTING SCHEME OF SPECIAL COMMISSIONS,
BUT PROPOSED VOLUNTARY SPECIAL COMMISSIONS WHERE EACH
PARTY TO THE DISPUTE APPOINTS TWO MEMBERS AND FIFTH
MEMBER CHOSEN AS IN ART. 3, PARA. 4 OF ANNEX 1A SAVE
BY SECRETARY GENERAL OF RELEVANT SPECIALIZED AGENCY.
JURISDICTION WOULD BE LIMITED TO QUESTIONS OF FACT
AND RELEVANT TRIBUNAL WOULD ACCEPT THE FACTS AS FOUND.

3. SPAIN SAID THAT IT PREFERRED ONLY ICJ OR
ARBITRATION OPTIONS BUT WOULD GO ALONG WITH
ART. 9 IF CHANGES TO SPECIALIZED COMMISSIONS ALONG
LINES SUGGESTED BY EL SALVADOR WERE ACCEPTED. INTER-
PRETATION/APPLICATION DISTINCTION UNWORKABLE IN SPAIN'S
VIEW. ROMANIA MADE A CONFUSING STATEMENT THAT SUPPORTED
EXISTING TEXT, INCLUDING LOS TRIBUNAL, BUT EXPRESSED
STRONG DOUBTS ON NEED TO ESTABLISH NEW EXPENSIVE
PROCEDURES AND SUPPORT FOR ARBITRATION, INCLUDING WITH
RESPECT TO INTERNATIONAL AREA.

4. MADAGASCAR, TUNISIA AND BAHRAIN SUPPORTED INCORPORATING
SPECIAL COMMISSIONS WITH GENERAL DISPUTE SETTLEMENT
SYSTEM ON LOS TRIBUNAL AND DELETING ART. 9, PARA 1(D)
AND PARA. 2. PERU OPPOSED SPECIAL PROCEDURES, AND
EMPHASIZED POSITION OF G-77 IN FAVOR OF ONE TRIBUNAL.
MADAGASCAR ADDED THAT ARBITRATION SHOULD BE THE MAIN
PROCEDURE WITH ICJ AND LOS TRIBUNAL AVAILABLE AS
WELL. BAHRAIN VIGOROUSLY SUPPORTED ICJ WHILE CRITICIZING
RESERVATIONS THAT HAVE BEEN MADE TO ICJ JURISDICTION.
LIBERIA ARGUED THAT IT WOULD BE SUFFICIENT FOR TEXT
TO CONTAIN A CLEAR STATEMENT THAT PARTIES TO A DISPUTE
ARE FREE TO CHOOSE TO GO TO ARBITRATION. ISRAEL
OPPOSED LOS TRIBUNAL, AND EMPHASIZED USE OF 1907 HAGUE
CONVENTION FOR SETTING UP ARBITRATION (AS IN ANNEX IB),
AS WELL AS ICJ.

5. FRANCE MADE A STRONG STATEMENT IN OPPOSITION TO
ESTABLISHING NEW LOS TRIBUNAL, POINTING OUT ITS PRESENT
COMPOSITION NOT ACCEPTABLE AND ADVANTAGES OF ARBITRATION.
FRENCH REP PROPOSED AMENDMENTS TO ART. 9, PARA. 7 SO THAT
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ARBITRATION WOULD BE APPLICABLE MEANS WHERE DECLARATION
OF PARTIES TO THE DISPUTE DIFFER, AND SUGGESTED
ARBITRATION SHOULD BE PRINCIPAL MEANS OF PARA. 3. FRANCE
DID NOT RPT NOT PROPOSE AMENDMENT TO DELETE REFERENCE TO
LOS TRIBUNAL. U.K. AND ITALY GENERALLY SUPPORTED
FRENCH STATEMENT, WITH UK EMPHASIZING COSTLINESS OF
PROLIFERATION OF PROCEDURES.

6. ART. 9 DEBATE WILL CONTINUE.
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